

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE TTAB  
JULY 28, 98  
U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Ormond Beach Chamber of Commerce, Inc.

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Serial No. 74/560,670

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William M. Hobby, III for Ormond Beach Chamber of Commerce,  
Inc.

Samuel E. Sharper, Jr., Trademark Examining Attorney, Law  
Office 101 (Christopher Wells, Managing Attorney)

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Before Simms, Cissel and Hanak, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

Ormond Beach Chamber of Commerce, Inc. (applicant), a  
Florida corporation, has appealed from the final refusal of  
the Trademark Examining Attorney to register the mark shown  
below:

for entertainment services in the nature of community festivals featuring music and food.<sup>1</sup> Pursuant to request, applicant submitted a disclaimer of the words "Jazz '90" and the phrase "A Celebration of Music, Food and People." The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 1,928,893, issued October 24, 1995, for the mark JAZZMATAZZ for entertainment services in the form of a musical band. Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

We affirm.

In a likelihood-of-confusion analysis, the respective marks must be considered in their entirety, but it is not improper in such an analysis to give more weight to a feature which may be more significant in creating a commercial impression. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). While applicant notes that the words "Jazz" and "MATAZZ" in its mark are separate words on separate lines and that its mark contains the design of a saxophone as the letter "J" in the word "Jazz," we nevertheless believe that the most prominent literal aspect of applicant's mark is nearly identical in sound and meaning to the registered mark. Also, as the Examining Attorney has pointed out, applicant, in its promotional

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<sup>1</sup> Application Ser. No. 74/560,670, filed August 12, 1994,

literature, has referred to its community festival by the name "Jazzmatazz."

With respect to the services, applicant argues that no one would be likely to confuse its community festival featuring food and entertainment, including live bands, art and children's displays, with the name of a band. However, there is no question that a significant part of applicant's services is the performance of live jazz entertainment by one or more bands.<sup>2</sup> Applicant's community festival services clearly feature music provided by bands. Musical entertainment is also an essential part of registrant's services. We agree with the Examining Attorney that one who observes and hears a musical performance at applicant's festival and then encounters registrant's service mark used in connection with registrant's musical entertainment services may well assume that the respective services are connected in some way, by license or sponsorship, for example. If we had any doubt about the conclusion that there is a likelihood of confusion, that doubt must be resolved in favor of the registrant, in accordance with well-established precedent.

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claiming use in commerce since April 1989.

Decision: The refusal of registration is affirmed.

R. L. Simms

R. F. Cissel

E. W. Hanak  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board

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<sup>2</sup> The Examining Attorney has made of record excerpts from articles from the Nexis database showing that bands are often featured at community festivals.

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